IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2001 OF 2003
IN
SUIT NO.2100 OF 2003

Jayshanker M. Yadav & Anr. ....Plaintiffs
V/s.
Jang Bahadur Barsat Rajbar & Ors. ....Defendants

Mr.Rakesh Dave i/b N.N. Vaishnawa & Co. for the Plaintiffs.
None for the Defendants.

CORAM : S.J. VAZIFDAR, J.
DATED : 19TH NOVEMBER, 2005.

P.C. :

1. The Plaintiff seeks in the suit an order and decree directing Defendant No.1 to hand over the flour mill business to the Plaintiff and for arrears of the alleged royalty charges/compensation and mesne-profits. In this Notice of Motion, the Plaintiff has sought an appointment of the Receiver and an injunction in respect of the flour mill.

2. Plaintiff No.1 and Defendant No.3 are the sons of Plaintiff No.2. Defendant No.2 and Plaintiff No.2 are the brothers. Plaintiff No.2 and Defendant No.2 are the sons of one Kishore Yadav, who expired on 19th May, 1999.

3. The Plaintiffs' case is that the deceased was a tenant in respect of the premises from which he carried on flour mill business. According to the Plaintiffs, a conducting agreement was entered into between the deceased and Defendant No.1 whereunder Defendant No.1 was to pay monthly royalty charges at the rate of 50% of grinding charges of the flour mill as per electricity consumption. The Plaintiffs have alleged that as on the date of filing of the suit, these charges were in the sum of Rs.2.50 per K.G. of wheat and grains. There is no evidence whatsoever to indicate that during admitted subsistence of this alleged conducting agreement from 1975 to 2002 any payments as suggested in the plaint were in fact made by Defendant No.1. It is difficult therefore, at this stage without any further evidence to direct Defendant No.1 to deposit any amount in Court as per the alleged oral agreement. The Plaintiffs' case is that with effect from 2002, Defendant No.1 has stopped paying the said charges.

4. Defendant No.1 has filed a Declaratory Suit in the Small Causes Court being R.A.D. Suit No.2007/2002. That suit is pending. The case of Defendant No.1 is that the leave and licence agreement

was entered into between the deceased and himself. I will presume that there is insufficient evidence to establish leave and licence agreement in these proceedings. Even so in view of what I have observed earlier, a prayer for appointment of the Court Receiver and deposit of amounts as per the alleged conducting agreement cannot be granted.

5. The ends of justice would be met by granting an injunction in terms of prayer (b) of the Notice of Motion.

6. In the circumstances, the Notice of Motion is made absolute in terms of prayer (b) except the portion bracketed in red namely the words "dealing with".

7. The Notice of Motion is accordingly disposed of.